

ISMAIL J. RAMSEY (CABN 189820)
 United States Attorney
 MICHELLE LO (NYRN 4325163)
 Chief, Civil Division
 KENNETH W. BRAKEBILL (CABN 196696)
 Assistant United States Attorney
 450 Golden Gate Avenue, Box 36055
 San Francisco, California 94102-3495
 Telephone: (415) 436-7167
 Fax: (415) 436-6748
 kenneth.brakebill@usdoj.gov

Attorneys for Defendant

MICHAEL L. HAWBECKER (CABN 191216)
 Hawbecker Law Offices
 P.O. Box 277
 San Clemente, CA 92674
 Telephone: (510) 219-2727
 Facsimile: (510) 217-5901
 Email: mlhlaw3@gmail.com

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

KAIRE MARY DIVINE POOLE,
 ADMINISTRATRIX OF THE ESTATE OF
 KAIRE JOYCE BESSES AKA KAIRE
 POOLE, DECEASED,

Plaintiff,

v.

MERRICK B. GARLAND,

Defendant.

CASE NO. 4:20-cv-09379 PJH

STIPULATION OF SETTLEMENT AND
 DISMISSAL WITH PREJUDICE; ~~PROPOSED~~
 ORDER

Honorable Phyllis J. Hamilton

IT IS HEREBY STIPULATED by and between the undersigned Plaintiff and Defendant, by and
 through their respective attorneys, as follows:

1 WHEREAS, Plaintiff filed the above-captioned action on December 29, 2020;

2 WHEREAS, Plaintiff filed the following administrative EEO complaints with the Bureau of
3 Prisons: BOP-2016-0672 and BOP-2016-0942:

4 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and to
5 settle and compromise fully any and all claims and issues that have been raised, or could have been
6 raised, in this action arising out of Plaintiff's employment with Defendant, which have transpired prior to
7 the execution of this Settlement Agreement ("Agreement");

8 NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and
9 other good and valuable consideration, the parties agree as follows:

10 1. **Settlement Amount.** In full and final settlement of all claims in connection with the
11 above-captioned action, Defendant shall pay Plaintiff a total sum of Fifty-Five Thousand dollars
12 (\$55,000.00) ("Settlement Amount"). Payment of the Settlement Amount shall be deposited by
13 electronic fund transfer to the bank account Plaintiff shall designate in an Electronic Funds Transfer
14 enrollment form the Plaintiff will provide to the undersigned Assistant United States Attorney within
15 five days of executing this Agreement. Plaintiff's attorney agrees to distribute the settlement proceeds
16 to the Plaintiff. Plaintiff and Plaintiff's attorney have been informed that payment of the Settlement
17 Amount may take sixty (60) days or more to process from the date that the Court signs this Agreement.

18 2. **Release.** In consideration of the payment of the Settlement Amount and the other
19 terms set forth in this Stipulation and Agreement, Plaintiff hereby releases and forever discharges
20 Defendant, the Bureau of Prisons, and any and all of their past and present officials, agents, employees,
21 attorneys, insurers, their successors and assigns, from any and all obligations, damages, liabilities,
22 actions, causes of action, claims and demands of any kind and nature whatsoever, including claims
23 arising under the Age Discrimination in Employment Act, 29 U.S.C. § 633a, whether suspected or
24 unsuspected, at law or in equity, known or unknown, or omitted prior to the date she executes this
25 Agreement, which arise from or relate to Plaintiff's employment with the Bureau of Prisons.

26 3. **Attorneys' Fees.** The parties agree that the Settlement Amount is in full satisfaction
27 of all claims for attorneys' fees and costs arising from work performed by Plaintiff's counsel at all
28 stages of litigation, including, but not limited to, the processing of Plaintiff's administrative and district

1 court complaints in connection with the above-captioned action, and any other EEO administrative
2 proceedings which are currently pending.

3 4. **Dismissal.** In consideration of the payment of the Settlement Amount and the other
4 terms of this Agreement, Plaintiff agrees that execution of this Stipulation and its approval by the Court
5 shall constitute dismissal of this case with prejudice pursuant to Federal Rule of Civil Procedure 41(a).
6 Said stipulation of dismissal shall dismiss, with prejudice, all claims asserted in this action, or that could
7 have been asserted in this action.

8 5. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code
9 Section 1542 are set forth below:

10 A general release does not extend to claims that the creditor or releasing party
11 does not know or suspect to exist in his or her favor at the time of executing the
12 release and that, if known by him or her, would have materially affected his or her
13 settlement with the debtor or released party.

14 Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by Plaintiff's
15 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and all rights
16 Plaintiff may have pursuant to the provision of that statute and any similar provision of federal law.
17 Plaintiff understands that, if the facts concerning Plaintiff's claims and the liability of the government
18 for damages pertaining thereto are found hereinafter to be other than or different from the facts now
19 believed by them to be true, this Agreement shall be and remain effective notwithstanding such material
20 difference.

21 6. **No Admission of Liability.** This is a compromise settlement of a disputed claim and
22 demand, which settlement does not constitute an admission of liability or fault on the part of the
23 Defendant, the Bureau of Prisons, or any of their past and present officials, agents, employees, attorneys,
24 or insurers on account of the events described in Plaintiff's complaint in this action.

25 7. **Tax Liability.** There shall be no withholding from the Settlement Amount. Plaintiff
26 understands that this payment will be reported to the Internal Revenue Service, and that any questions as
27 to the tax liability, if any, as a result of this payment is a matter solely between Plaintiff and the relevant
28 tax authorities. If any withholding or income tax liability is imposed upon Plaintiff or Plaintiff's counsel
based on payment of the Settlement Amount, Plaintiff or Plaintiff's counsel shall be solely responsible

1 for paying any such determined liability from any government agency thereof. Nothing in this
2 Agreement constitutes an agreement by the United States of America concerning the characterization of
3 the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the United States
4 Code.

5 **8. Treasury Offset Program.** Nothing in this Agreement waives or modifies federal,
6 state, or local law pertaining to taxes, offsets, levies, and liens that may apply to this Agreement or the
7 settlement proceeds, and Plaintiff is executing this Agreement without reliance on any representation by
8 Defendant as to the application of any such law. Accordingly, the United States may offset against the
9 Settlement Amount Plaintiff's delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560
10 U.S. 586 (2010).

11 **9. Knowing and Voluntary Waiver of Remedies Under Age Discrimination in**
12 **Employment Act.** Plaintiff acknowledges that Plaintiff has up to twenty-one (21) calendar days from
13 the date Plaintiff receives this Agreement to review and consider this Agreement, discuss it with an
14 attorney of Plaintiff's choice, and decide to sign it or not sign it, although Plaintiff may accept or return
15 it to Defendant's counsel at any time within those twenty-one (21) days. Plaintiff is advised to consult
16 Plaintiff's attorney about the Agreement.

17 **10.** Once Plaintiff signs and dates this Agreement, Plaintiff will have seven (7) days in
18 which to revoke acceptance. To revoke, Plaintiff must send a written statement of revocation, which
19 should be mailed and faxed to: Kenneth Brakebill, Assistant United States Attorney, United States
20 Attorney's Office, 450 Golden Gate Avenue, San Francisco, CA 94102-3495; fax (415) 436-6748.
21 Plaintiff understands that if Plaintiff revokes, this Agreement shall have no effect. If Plaintiff does not
22 revoke, this Agreement will become effective on the eighth (8th) day ("the Effective Date") after the
23 date Plaintiff signs and dates this Agreement.

24 **11. Outstanding Liens for Medical or Psychological Treatment.** Plaintiff is solely
25 responsible for satisfying any and all outstanding liens relating to Plaintiff's medical or psychological
26 treatment arising out of the subject matter of this action. Plaintiff shall indemnify Defendant from any
27 liability Defendant may incur from any lien claimant arising out of Plaintiff's failure to satisfy
28 outstanding lien(s).

1 12. **Choice of Law and Venue.** This Agreement is governed by the laws of the United
2 States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United
3 States District Court for the Northern District of California.

4 13. **Construction.** Each party hereby stipulates that it has been represented by and has
5 relied upon independent counsel in the negotiations for the preparation of this Agreement, that it has had
6 the contents of the Agreement fully explained to it by such counsel, and is fully aware of and
7 understands all of the terms of the Agreement and the legal consequences thereof, and enters into this
8 Agreement knowingly and voluntarily. For purposes of construction, this Agreement shall be deemed to
9 have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any
10 Party for that reason in any subsequent dispute.

11 14. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
12 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in any way
13 be affected or impaired thereby.

14 15. **Integration.** This instrument shall constitute the entire Agreement between the
15 parties, and it is expressly understood and agreed that the Agreement has been freely and voluntarily
16 entered into by the parties hereto with the advice of counsel, who have explained the legal effect of this
17 Agreement. The parties further acknowledge that no warranties or representations have been made on
18 any subject other than as set forth in this Agreement. This Agreement may not be altered, modified or
19 otherwise changed in any respect except by writing, duly executed by all of the parties or their
20 authorized representatives.

21 16. **Authority.** The signatories to this Agreement warrant and represent that they
22 possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement.

23 //

24 //

25 //

26 //

27 //

28 //

17. **Execution in Counterparts.** It is contemplated that this Agreement may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

DATED: 3/18/2024 | 2:22:53 PDT

DocuSigned by:

610A1380F45C4DB...

KAIRE MARY DIVINE POOLE
Administratrix of the Estate of Kaire Joyce Besses
aka Kaire Poole, Deceased

DATED: March 19, 2024


MICHAEL L. HAWBECKER
Attorney for Plaintiff

DATED:

By:

ISMAIL J. RAMSEY
United States Attorney

KENNETH
BRAKEBILL

Digitally signed by KENNETH
BRAKEBILL
Date: 2024.04.15 13:00:25 -07'00'

KENNETH BRAKEBILL
Assistant United States Attorney
Attorney for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April 18, 2024

HONORABLE PHYLIS J. HAMILTON
Senior U.S.D.
Northern District

